

## **REMARKS**

Applicant appreciates the thorough review of the present application that is reflected in the Office Actions mailed September 23, 2005, February 24, 2006, June 1, 2006 and September 13, 2006. Applicant has cancelled Claims 13 and 15, added new dependent Claims 37-38, and amended various of the remaining claims. In light of these amendments and the arguments presented herein, Applicant respectfully submits that all of the pending claims are now in condition for allowance.

### **I. The Rejections Under 35 U.S.C. § 112**

Claims 13, 15, 26, 28, 31 and 36 stand rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite. Applicant has cancelled Claims 13, 15 and 35. Applicant has amended Claim 26 to clearly claim the combination of the corner protector and the object, thereby obviating the rejection of Claim 26. Applicant has also amended Claim 28 to correct a typographical error (namely, the phrase "corner protector" in line 1 should have read "protective device"), thereby obviating the rejections of Claims 28, 31 and 36. Accordingly, Applicants respectfully submit that the above-described claim cancellations and amendments overcome each of the rejections under 35 U.S.C. § 112.

### **II. The Rejection Based on Hornberger**

Independent Claim 1 stands rejected as anticipated under 35 U.S.C. § 102 by U.S. Patent No. 5,947,037 to Hornberger et al. ("Hornberger"). Applicant has amended Claim 1 to claim a "corner protector in combination with a cabinet." Claim 1 has also been amended to recite that "the top member, the inner wall and the outer wall [of the corner protector] define a cavity" and that "a first wall of the cabinet and a second wall of the cabinet are received within the cavity." In contrast, Hornberger is directed to a folding table that includes a "corner structure 80." (Hornberger at Figs. 1-2). Hornberger does not disclose a cabinet. As such, Hornberger does not anticipate Claim 1. Moreover, the inner and outer walls of the corner structure of Hornberger, as interpreted in the pending rejections – i.e., to only include a very small segment of walls 82 and 84 such that the segment could be referred to as "generally planar" – does not include a cavity that could receive both first and second walls of a cabinet. Accordingly, Hornberger does not anticipate Claim 1, nor would it be obvious to combine Hornberger with other references to arrive at the subject matter of Claim 1. As

such, Applicant respectfully submits that the rejection of Claim 1 based on Hornberger should be withdrawn.

### **III. The Rejections Under 35 U.S.C. § 102 Based on Brophy**

Claims 1, 6-7, 9-10, 13, 15-16, 18, 22-23, 29 and 32-34 stand rejected as anticipated under 35 U.S.C. § 102 by U.S. Patent No. 5,560,172 to Brophy et al. ("Brophy"). Brophy is directed to a "reducer block" for a retaining wall. (Brophy at Title). The reducer blocks of Brophy are open-celled concrete or masonry blocks. (Brophy at Col. 2, lines 29-30).

#### **A. The Rejection of Claims 1 and 10**

As amended, independent Claim 1 is directed to a corner protector in combination with a cabinet. As discussed above, Brophy is directed to a "reducer block" for a retaining wall that is "used to create a transition between a thick wall base and a somewhat thinner upper portion." (Brophy at Col. 1, lines 5-9). Brophy does not disclose or suggest either (1) a corner protector or (2) a cabinet. As such, Brophy does not anticipate Claim 1. Brophy likewise does not disclose or suggest a cavity which receives first and second walls of a cabinet. Accordingly, the rejection of Claim 1 as anticipated by Brophy should be withdrawn for at least each of these reasons.

Claim 10 depends from Claim 1, and hence the rejection of Claim 10 should be withdrawn for at least the reasons that the rejection of Claim 1 should be withdrawn. In addition, Claim 10 recites that "the inner wall includes a cutout portion . . . wherein the cutout portion of the inner wall is an end portion of the inner wall." The Office Action does not identify where Brophy discloses the recitation added by Claim 10, and Applicant respectfully submits that the identified "inner wall" 36 of Brophy does not include a cutout portion that is an "end portion of the inner wall" as recited in Claim 10. Accordingly, the rejection of Claim 10 should be withdrawn for this additional reason.

#### **B. The Rejection of Claims 6-7, 9 and 33-34**

Independent Claim 33 has been amended to recite a "corner protector in combination with an object having a first wall and a second wall." Brophy does not disclose or suggest a corner protector or an object having a first wall and a second wall, but instead discloses open-celled concrete or masonry retaining wall blocks. As such, Brophy does not anticipate Claim 1. Claim 33 further recites that "a second opening is provided into the cavity between the

inner wall and the outer wall opposite the side wall" and that "the first and second walls of the object are received within the cavity so that a portion of a corner defined by the first and second walls of the object is protected by the corner protector." Applicant respectfully submits that Brophy clearly does not disclose or suggest either of these recitations of Claim 33. Accordingly, the rejection of Claim 33 as anticipated by Brophy should be withdrawn for at least each of these reasons.

Claims 6-7, 9 and 34 each depend from Claim 33, and hence the rejection of these claims should be withdrawn for at least the reasons, discussed above, that the rejection of Claim 33 should be withdrawn. In addition, Claim 6 recites that the acute angle is approximately 67 degrees, and Claim 7 recites that the acute angle is approximately 45 degrees. Based on the dimensions provided at Col. 3, lines 34-47 of Brophy, the angle defined by the intersection of the planes of walls 32 and 34 is 58.76 degrees. Applicant respectfully submits that 58.76 degrees does not meet either of the recitations of Claims 6 or 7, and hence the rejections of Claims 6 and 7 should be withdrawn for this additional reason.

C. The Rejection of Claims 16, 18 and 22-23

Independent Claim 16 has also been amended. As amended, Claim 16 recites a corner protector that includes a cavity. A "portion of the inner wall adjacent the side wall includes a cutout portion that forms a first opening into [the] cavity", and "a second opening is provided into the cavity between the inner wall and the outer wall opposite the side wall." Applicant respectfully submits that Brophy does not disclose a corner protector, let alone a corner protector having a cavity that includes the first and second openings recited in Claim 16. Accordingly, the rejection of Claim 16 as anticipated by Brophy should be withdrawn. In addition, Claim 16 has been further amended to recite that "the first opening is configured to receive a first wall of an object and the second opening is configured to receive a second wall of the object." Applicant respectfully submits that Brophy does not include first and second openings that are configured to receive the first and second walls of an object. Accordingly, the rejection of Claim 16 as anticipated by Brophy should be withdrawn for at least each of these reasons.

D. The Rejection of Claim 29

Independent Claim 29 has been amended to recite that the protective device "is formed of a polymeric material" and to recite that "a second opening is provided into the cavity between the inner wall and the outer wall opposite the side wall." Applicant submits that Brophy does not disclose or suggest (1) a "protective device", (2) an opening into the cavity "between the inner wall and the outer wall **opposite the side wall**" or (3) forming the device of "a polymeric material" as is recited in Claim 29. Accordingly, the rejection of Claim 29 should be withdrawn for at least each of these reasons.

**IV. The Rejections Under 35 U.S.C. § 103 Based on Brophy and Azar**

Claims 2, 4, 8 and 19-21 stand rejected as obvious under 35 U.S.C. § 103 over Brophy in view of U.S. Patent No. 6,782,673 to Azar ("Azar"). Applicant also respectfully traverses each of these rejections.

A. The Rejection of Claims 2 and 4

Claims 2 and 4 each depend from Claim 1. As discussed above with respect to the rejections under 35 U.S.C. § 102 based on Brophy, Brophy does not disclose or suggest the (1) corner protector, (2) cabinet or (3) cavity which receives first and second walls of a cabinet recitations of Claim 1. Azar is directed to a concrete block that is used in fence or building construction, and Applicant respectfully submits that Azar likewise does not disclose or suggest any of the above-identified recitations of Claim 1 that are not taught by Brophy. (See Azar at Title). Thus, as the combination of Azar and Brophy fail to disclose at least three recitations of Claim 1, the combination of Azar and Brophy cannot render Claims 2 or 4 (each of which depend from Claim 1) obvious. Accordingly, the rejection of Claims 2 and 4 should be withdrawn for at least each of these reasons.

B. The Rejection of Claim 8

Claim 8 depends from Claim 33. As discussed above with respect to the rejections under 35 U.S.C. § 102, Brophy does not disclose or suggest the (1) corner protector, (2) an object having a first wall and a second wall, (3) "a second opening . . . between the inner wall and the outer wall opposite the side wall" or (4) "first and second walls of the object [that] are received within the cavity so that a portion of a corner defined by the first and second walls of the object is protected by the corner protector" recitations of Claim 33. Azar likewise

does not disclose or suggest any of the above-identified recitations of Claim 33. Thus, as the combination of Azar and Brophy fail to disclose at least four recitations of Claim 33, the combination of Azar and Brophy cannot render Claim 8 (which depends from Claim 33) obvious. Accordingly, the rejection of Claim 8 should be withdrawn for at least each of these reasons.

C. The Rejection of Claims 19-21

Claims 19-21 each depend from Claim 16. As discussed above with respect to the rejections under 35 U.S.C. § 102, Brophy does not disclose or suggest (1) a corner protector, (2) a "portion of the inner wall adjacent the side wall includes a cutout portion that forms a first opening into [the] cavity", (3) "a second opening [that] is provided into the cavity between the inner wall and the outer wall opposite the side wall" or (4) that "the first opening is configured to receive a first wall of an object and the second opening is configured to receive a second wall of the object" as recited in Claim 16. Azar likewise does not disclose or suggest any of the above-identified recitations of Claim 16 that are not taught by Brophy. Thus, as the combination of Azar and Brophy fail to disclose at least four recitations of Claim 16, the combination of Azar and Brophy cannot render Claims 19-21 (each of which depend from Claim 16) obvious. Accordingly, the rejection of Claims 19-21 should be withdrawn for at least each of these reasons.

In addition, Claim 19 recites that "the outer wall, the inner wall, and the side wall extend above a top surface of the top member to form a ridge around the periphery of the top member." The alleged "ribs" of Azar are not provided on a side wall of the block, and Brophy clearly does not disclose providing "a ridge around the periphery of the top member" as recited in each of Claims 19-21. Accordingly, the rejections of Claims 19-21 should be withdrawn for at least these additional reasons. Moreover, Claim 20 recites that "a plurality of support ribs are provided on the top surface of the top member that connect the outer wall to the inner wall." Azar does not disclose any such support ribs that "connect the outer wall to the inner wall", providing yet another basis for withdrawal of the rejection of Claims 20 and 21. Finally, Claim 21 recites that at least one support rib is provided on the top surface of the top member that connects the outer wall to the side wall. Once again, Azar does not disclose any such support rib, providing yet another reason for withdrawal of the rejection of Claim 21.

**V. The Rejections Under 35 U.S.C. § 103 Based on Brophy and Knudson**

Claims 11-12 and 25-26 stand rejected as obvious under 35 U.S.C. § 103 over Brophy in view of U.S. Patent No. 6,571,529 to Knudson et al. ("Knudson"). Applicant also respectfully traverses each of these rejections.

**A. The Rejection of Claims 11-12**

Claims 11 and 12 each depend from Claim 33. As discussed above with respect to the rejections under 35 U.S.C. § 102, Brophy does not disclose or suggest (1) a corner protector, (2) an object having a first wall and a second wall, (3) "a second opening . . . between the inner wall and the outer wall opposite the side wall" or (4) "first and second walls of the object [that] are received within the cavity so that a portion of a corner defined by the first and second walls of the object is protected by the corner protector" as recited in Claim 33. Knudson likewise does not disclose or suggest any of the above-identified recitations of Claim 33. Thus, as the combination of Knudson and Brophy fail to disclose at least four recitations of Claim 33, the combination of Knudson and Brophy cannot render Claims 11-12 (which depend from Claim 33) obvious. Accordingly, the rejections of Claims 11-12 should be withdrawn for at least each of these reasons.

**B. The Rejection of Claims 25-26**

Claims 25 and 26 each depend from Claim 16. As discussed above with respect to the rejections under 35 U.S.C. § 102, Brophy does not disclose or suggest (1) a corner protector, (2) a "portion of the inner wall adjacent the side wall includes a cutout portion that forms a first opening into [the] cavity", (3) "a second opening is provided into the cavity between the inner wall and the outer wall opposite the side wall" or (4) "the first opening [that] is configured to receive a first wall of an object and the second opening is configured to receive a second wall of the object" as recited in Claim 16. Knudson likewise does not disclose or suggest any of the above-identified recitations of Claim 16 that are not taught by Brophy. Thus, as the combination of Knudson and Brophy fail to disclose at least four recitations of Claim 16, the combination of Knudson and Brophy cannot render Claims 25-26 (each of which depend from Claim 16) obvious. Accordingly, the rejections of Claims 25-26 should be withdrawn for at least each of these reasons.

In addition, Claim 26 recites that the corner protector is "in combination with the object", and that "a portion of the cavity between the inner wall and the outer wall has a width that is slightly less than the width of the second wall of the object, such that the inner wall and the outer wall form an interference fit with the second wall of the object when the second wall of the object is received within the cavity." Knudson does not disclose these recitations of Claim 26, providing additional grounds for withdrawal of the rejection of Claim 26.

#### **VI. The Rejections Under 35 U.S.C. § 103 Based on Brophy and Marsh**

Claims 28, 31 and 36 stand rejected as obvious under 35 U.S.C. § 103 over Brophy in view of U.S. Patent No. 6,368,694 to Marsh et al. ("Marsh"). In particular, the Office Action states that Marsh discloses all of the recitations of Claim 28 except for (1) the inner wall located opposite and extending substantially parallel to the outer wall and (2) the side wall and the outer wall define an acute angle and the side wall and the inner wall define an obtuse angle. The Office Action further states that Brophy discloses a "protective device" that discloses the recitations of Claim 28 that are missing from Marsh, and that it would have been obvious for a person of skill in the art to modify the device of Marsh to include the structure of Brophy. Applicant also respectfully traverses this rejection.

Claim 28 is directed to a cabinet that includes a protective device mounted on at least one corner thereof. As an initial matter, Applicant respectfully submits that the Office Action is incorrect in stating that Brophy discloses a "protective device." What Brophy discloses is a reducer block for a retaining wall. (*See* Brophy at Title). A retaining wall reducer block does not protect anything; instead, it is part of a wall "that retain[s] an earthen slope." (Brophy at Col. 1, lines 13-14). Moreover, Brophy certainly does not indicate that the reducer blocks described therein comprise "protective devices."

Applicant also respectfully submits that Brophy is not analogous prior art. Pursuant to MPEP § 2141.01(a), "in order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." Applicant respectfully submits that reducer blocks for retaining walls are neither from the field of endeavor of the present invention, nor are they reasonably pertinent to the particular problem with which the inventor was concerned. Here, Claim 28 is directed to a "cabinet with a protective device." Reducer blocks for retaining walls have absolutely

nothing to do with cabinets, and would certainly not be used as a protective device for a cabinet. The burden is on the Examiner to show that the subject matter of Brophy "logically would have commended itself to an inventor's attention in considering his problem." *See Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993). Applicant respectfully submits that no such showing has or could be made, providing an independent basis for withdrawal of the rejection of Claim 28.

Applicant also submits that one of skill in the art would not have been motivated to combine Marsh and Brophy in the manner suggested in the pending rejections. In particular, **one of skill in the art would not have been motivated to modify the plastic corner protector of Marsh to have the shape of a reducer block for a concrete or masonry retaining wall.** The Office Action states that such a motivation allegedly would have been found because both Marsh and Brophy teach "alternate conventional protective device structures." This statement, however, does not identify any motivation to combine Marsh and Brophy in the manner suggested. Accordingly, the lack of any motivation to combine the references as suggested in the pending rejections provides yet another basis for withdrawal of the rejection of Claim 28.

Finally, Applicant respectfully submits that the device of Marsh would not work if modified in the manner suggested in the pending rejections. In particular, if the device of Marsh were modified to have the identified inner wall 40 opposite and substantially parallel to the identified outer wall 31, then the resilient arm 40 (1) could not be easily grasped by a user and (2) would not hold wall 30 against the cabinet. Moreover, if the device of Marsh were further modified as suggested in the pending rejections to have the "side wall" (presumably resilient arm 41) connected to the outer wall and the inner wall, then the arm 41 would not be a resilient arm at all and the device of Marsh would not work properly. Applicant respectfully submits that one of skill in the art would not have been motivated to modify the plastic cabinet corner protector of Marsh to have the design of a concrete block that would prevent the device of Marsh from working properly. Accordingly, the rejection of Claim 28 should be withdrawn for this additional reason.

Claims 31 and 36 depend from Claim 28; hence the rejections of these claims should be withdrawn for at least the reasons that the rejection of Claim 28 should be withdrawn.

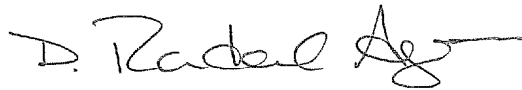


In re: Robert C. Hightower  
Application No.: 10/602,899  
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## **VI. Conclusion**

Inasmuch as the points and concerns raised in the Office Action have been addressed in full, Applicant respectfully requests that this application is in condition to pass to issue, which action is respectfully requested. Should the Examiner have any matters of outstanding resolution, he is encouraged to telephone the undersigned at 919-854-1400 for expeditious handling.

Respectfully submitted,

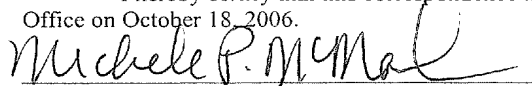


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